

OPEN ACCESS

ISSN 2280-4056

*E-Journal of  
International and Comparative*

# LABOUR STUDIES

Volume 3, No. 1 January 2014



**ADAPT**  
www.adapt.it  
UNIVERSITY PRESS

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# The Legal Aspects of the Deregulation of Professions as a Supporting Measure towards Greater Mobility of Workers

Valentina Franca and Elizabeta Zirnstein \*

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## 1. Introduction

The mobility of workers is a topic discussed at almost every labour relations conference, in different professional settings, during political decision-making processes and in the media. The topic usually relates to the right of European citizens to move freely within the European Union (hereinafter the EU). On the other hand, the relation between the *legal regulation of professional performance and the mobility of workers* is rarely discussed in literature. However, the relationship and the topic are extremely important, which is evident in the activities of the EU. The EU aims to design a system providing as simple and free access to professions as possible. The requirements for the pursuit of a certain profession should, thus, no longer be the fulfilment of previously prescribed criteria, e.g. appropriate education, training, professional experience, etc, or at least these requirements (restrictions) should only exist for those professions in which they are justifiable. Namely, where the lessening of these requirements positively affects labour market flexibility as well as facilitating greater mobility of the workforce within the EU.

Because of the effects that the setting of requirements for the pursuit of a certain profession could have on the functioning of the entire European labour market, setting these requirements is no longer only a matter for

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\* Valentina Franca is PhD, Faculty of Management, University of Primorska, Faculty of Management, Cankarjeva 5, 6000 Koper, e-mail: valentina.franca@fm-kp.si, telephone: +386 5 610 20 00. Elizabeta Zirnstein is PhD, Faculty of Management, University of Primorska, Faculty of Management.

individual Member States, but rather for the entire EU. By regulating professions, i.e. by setting formal requirements for the pursuit of a certain profession (more on the definition of the term *regulation* below), access to professions is restricted, hindering the mobility of the workforce in the single European market and consequently also the liberalisation of the market and free movement of goods, persons, capital and services within the EU. Non-fulfilment of the requirements for the pursuit of an individual profession may exclude (eliminate) an individual worker – a national of an EU Member State – from the single European market<sup>1</sup>. Thus, restrictive regulation in this field may have the same “stopping” effect on the mobility of the workforce as discrimination based on nationality.

The rights of EU citizens to work and perform services in another Member State are basic rights in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter “TFEU”)<sup>2</sup>. Thus, it is the duty of the EU, as well as of Member States, to provide legal regulation so that these two rights can be exercised. At first sight it appears that setting requirements for the pursuit of a certain profession (i.e. the regulation of professions) contradicts the free movement of workers and services. However, in general the EU does not object to the regulation of professions, acknowledging the existence of legitimate arguments for certain restrictions in certain professions; especially where there is a strong general interest, usually related to the provision of safety and health. This includes doctors, nurses, the fields of construction, mountain guides and similar professions. A problem arises when the regulation of an individual profession essentially hinders, or even renders (almost) impossible, access to the labour market. This presents a great difficulty for the nationals of EU Member States wishing to be (self) employed in another EU Member State. The regulation may also be restrictive at the national level, especially if many professions are regulated and/or if numerous and demanding requirements for the pursuit of individual professions are set. The EU had already recognised this problem in 1970, when it decided to design a system for the recognition of professional qualifications. EU citizens have the right to work in a Member State regardless of where in the EU they have obtained

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<sup>1</sup> European Commission, Commission reports, 2011, [http://ec.europa.eu/competition/sectors/professional\\_services/reports/reports.html](http://ec.europa.eu/competition/sectors/professional_services/reports/reports.html) (accessed April 20, 2013).

<sup>2</sup> Treaty on European Union and the Treaty on the Functioning of the European Union, 2010, Official Journal EU, C 83/10.

their professional qualification. On the other hand, every EU Member State has the right to set requirements, which an individual must fulfil in order to pursue a given profession in that Member State. Thus, it might be that the Member State will not recognise qualifications acquired elsewhere in the EU, stating that these qualifications are not adequate (e.g. they do not meet the demands of the national legislation).

The recognition of professional qualifications has a significant role in allowing nationals of one EU Member State to work in another Member State. The purpose of the normative activities of the EU in this field is to ease such recognition and, consequently, the mobility of the workforce. Thereby, the recognition of professional qualifications became a founding stone of the single market, and the first directive in this area was adopted in 1964<sup>3</sup>. In the past (i.e. before the establishment of a system for the recognition of professional qualifications) every EU citizen wishing to pursue a regulated profession in another Member State (the host Member State), had to prove that they had an appropriate professional qualification, acquired in their home Member State. In the years following this first directive, the EU regulated the recognition of professional qualifications in 15 additional directives<sup>4</sup>, making the system of the recognition of professional qualifications unclear and inefficient. In order to simplify and modernise the entire system of the recognition of professional qualifications, the provisions of these directives were incorporated in Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (hereinafter: Directive 2005/36/EC)<sup>5</sup> in 2007. Since 2007, when Directive 2005/36/EC came into force, there has been a new system of mutual recognition of professional qualifications in place, enabling nationals of EU Member States access to and pursuit of regulated professions and activities in other Member States under the same requirements as those valid for nationals of the host Member State. The fundamental principle of the system of mutual recognition of professional qualifications is: if an EU citizen is trained in their country to

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<sup>3</sup> Council Directive 64/220/EEC of 25 February 1964 on the Coordination of Special Measures Concerning the Movement and Residence of Foreign Nationals which are Justified on Grounds of Public Policy, Public Security or Public Health, Official Journal of the EU, 56/845.

<sup>4</sup> These three directives set up a general system of recognition of qualifications and the other 12 were sector directives.

<sup>5</sup> Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, Official Journal of the EU, L 255/05.

pursue an individual profession, they are also trained to pursue the same profession in any other EU Member State.

The recognition of professional qualifications is in theory an auxiliary instrument supporting the right of EU citizens to work and perform services in another Member State. However, the practical experiences of Member States' nationals as well as statistical data show a discrepancy between theory and practice. Namely, despite the system of mutual recognition of professional qualifications, an individual wishing to pursue their profession in another Member State faces numerous obstacles during the procedure for the recognition of their professional qualifications<sup>6</sup>. From the legal point of view, it should be stressed that difficulties arise from the possibility of national interpretations of the provisions of Directive 2005/36/EC<sup>7</sup>, due to which the entire system of mutual recognition does not operate uniformly. Therefore, it is not surprising that in the past 13 years only approximately 200,000 EU residents requested the recognition of professional qualifications in another Member State.<sup>8</sup> Specifically because of these difficulties, the European Commission has already prepared a proposal of amendments to Directive 2005/36/EC.<sup>9</sup> Despite the efforts to achieve the fastest

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<sup>6</sup> The host Member States usually require submission of different documents, certificates, school reports, etc., with court certified translations or as originals during the procedures for the recognition of professional qualifications. The complex and lengthy procedures (in some Member States recognition is issued after more than a year of waiting), often require a disproportionate amount of documentation to be presented, and the applicants can also find it difficult to even establish which state body is competent, as well as other similar difficulties.

<sup>7</sup> For the reason the protection of public interest, a Member State may require from the applicants for the recognition of professional qualifications fulfilment of conditions, which are (additionally) specified in the national legislation, due to which the entire system of the mutual recognition of professional qualifications does not operate in a uniform manner. This ambiguity of the directive for the national interpretation is also mentioned in the EFTA court judgment, case No. E-1/11, foremost in Points 72 to 75.

<sup>8</sup> European Commission, 2011, *op. cit.* Considering that there are 415.7 Million persons active in the EU: M. Wozowczyk, N. Massarelli, *European Union Labour Force Survey – Annual Results 2010*, 2010,

[http://epp.eurostat.ec.europa.eu/cache/ITY\\_OFFPUB/KS-SF-11-030/EN/KS-SF-11-030-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-11-030/EN/KS-SF-11-030-EN.PDF) (accessed March 2, 2012,) the 200,000 applications for the recognition of professional qualifications in the past 13 years is a distinctively low number.

<sup>9</sup> European Commission, *Proposal for a Directive of the European Parliament and of the Council amending Directive 2005/36/EC on the Recognition of Professional Qualifications and Regulation on Administrative Cooperation through the Internal Market Information System*, 2011,

[http://ec.europa.eu/internal\\_market/qualifications/docs/policy\\_developments/modernising/COM2011\\_883\\_en.pdf](http://ec.europa.eu/internal_market/qualifications/docs/policy_developments/modernising/COM2011_883_en.pdf) (accessed May 4, 2013).

possible mutual recognition, the European Commission is aware that the end effect of such recognition in a system with approximately 800 regulated professions<sup>10</sup> is questionable. Thus the Commission started to emphasise the deregulation of professions as an important tool, which is also aimed at boosting the greater mobility of the workforce within the EU.

Moreover, it has to be assumed that the expectations of the labour market go towards *greater demand for highly qualified workers*. According to the forecasts of the European Centre for Development of Vocational Training<sup>11</sup> the demand for highly qualified workers will increase by 16 million working positions by 2020, meaning that the share of highly qualified workers in the labour market will increase from its current level of 29 per cent to 35 per cent in 2020, while the demand for low-qualified workers or those without any qualifications will continue to decrease - supposedly falling by approximately 12 million working positions during the same time. Taking into account the forecasted trends, an even greater desire and need for the mobility and free flow of the workforce may be expected. In the EU strategy for smart, sustainable and inclusive growth, the European Commission stresses the need for the encouragement of mobility within the EU and the more efficient matching of the supply and demand of the workforce<sup>12</sup>. A similar opinion is also expressed in other documents of the European Commission<sup>13</sup>. In addition to this, the

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<sup>10</sup> DG Internal Market and Services, *Study to Provide an Inventory of Reserves of Activities linked to Professional Qualifications Requirements in 13 EU Member States & Assessing their Economic Impact (Final Report)*, 2012, [http://ec.europa.eu/internal\\_market/qualifications/docs/news/20120214-report\\_en.pdf](http://ec.europa.eu/internal_market/qualifications/docs/news/20120214-report_en.pdf) (accessed February 18, 2013), 1.

<sup>11</sup> European Centre for Development of Vocational Training, *Skills Supply and Demand in Europe. Medium term forecast up to 2020*, Publication Office of the European Union, Luxembourg, 2011, [http://www.cedefop.europa.eu/en/Files/3052\\_en.pdf](http://www.cedefop.europa.eu/en/Files/3052_en.pdf) (accessed February 3, 2012), 13.

<sup>12</sup> European Commission, *Europe 2020*, 2010, [http://ec.europa.eu/europe2020/index\\_en.htm](http://ec.europa.eu/europe2020/index_en.htm) (accessed April 25, 2011).

<sup>13</sup> For example, the document of the European Commission, *Agenda for New Skills and Jobs*, 2010, <http://ec.europa.eu/social/main.jsp?langId=en&catId=958> (accessed April 25, 2011), warns that there is an imbalance in the European labour market and that the potential mobility of the workforce is not sufficiently taken advantage of. Similarly, in the document of the European Commission, *Towards a Single Market Act For a Highly Competitive Social Market Economy, 50 Proposals for Improving our Work, Business and Exchanges with Another*, 2010, [http://ec.europa.eu/internal\\_market/smact/docs/single-market-act\\_en.pdf](http://ec.europa.eu/internal_market/smact/docs/single-market-act_en.pdf) (accessed April 25, 2011), foresees 50 measures for the encouragement of work, business and cooperation in the EU.



forecasted demographic trends should also not be overlooked. By 2050, the workforce in the EU is expected to decrease by 68 million workers (under the presumption of the same inclusion of workers in the labour market and the same immigration trends)<sup>14</sup>.

Based on the forecasted trends, the EU already began focussing on the modernisation of the system of the recognition of professional qualifications in 2010, when a *public consultation on Directive 2005/36/EC* was launched. A special report based on the 370 contributions received was issued in July 2011<sup>15</sup>. The main problems, which arose during the evaluation process of Directive 2005/36/EC, are the availability of the information on recognition procedures, the efficiency of recognition procedures, the operation of the systems of automatic recognition and the areas to which Directive 2005/36/EC applies.

As we can see, the system of recognition of professional qualifications by itself is not enough to ensure the proper mobility of workers within the EU. This is somehow obvious: in a system with approximately 800 regulated professions<sup>16</sup>, the results of recognition procedures are indeed questionable. Therefore, the deregulation of professions is becoming more and more important. Especially in the present economic crisis, the deregulation of professions is often seen as a tool to boost national competitiveness and as a supporting measure in the process of the economic recovery of EU States. Indeed, the deregulation of professions was one of the conditions for Greece to receive EU and IMF loans<sup>17</sup>, and a similar situation was seen in Spain. The liberalisation of closed professions has also in general been one of key suggestions from international creditors since 2010.

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<sup>14</sup> Reflection Group, *Project Europe 2030: Challenges and Opportunities*, 2010, <http://www.reflectiongroup.eu/2010/05/08/project-europe-2030-challenges-and-opportunities/> (accessed April 22, 2013), 24.

<sup>15</sup> European Commission, *Evaluation of the Professional Qualifications Directive*, 2011, [http://ec.europa.eu/internal\\_market/qualifications/docs/news/20110706-evaluation-directive-200536ec\\_en.pdf](http://ec.europa.eu/internal_market/qualifications/docs/news/20110706-evaluation-directive-200536ec_en.pdf) (accessed March 3, 2012).

<sup>16</sup> DG Internal Market and Services, *Study to Provide an Inventory of Reserves of Activities linked to Professional Qualifications Requirements in 13 EU Member States & Assessing their Economic Impact (Final Report)*, 2012, [http://ec.europa.eu/internal\\_market/qualifications/docs/news/20120214-report\\_en.pdf](http://ec.europa.eu/internal_market/qualifications/docs/news/20120214-report_en.pdf) (accessed February 18, 2013), 1.

<sup>17</sup> E. Achtsioglou, *Greece 2010-2012, Labor in the maelstrom of deregulation*, in *European Review of Labour and Research*, 2013, vol. 19, n. 1, 125-127.

The connection between the recognition of professional qualifications and the deregulation of professions is obvious. The deregulation of professions aims to lessen the requirements for the access to certain (regulated) working positions and positively affects the mobility of workers. The benefits of both the recognition of professional qualifications and deregulation of professions are the releasing of a rigid institutional structure, which impedes the EU economy on its way towards recovery. In this sense, we could also speak about the appropriate balance between the regulation and deregulation of professions. Government intervention in the form of requirements set up for the pursuit of a certain profession are sometimes necessary to protect the general interest, while on the other hand the purpose of the regulation of professions can also be non-economic, i.e. it can pursue wider social aims. Through the regulation of professions national authorities can try to develop and strengthen certain values, such as trust and honesty.

The recognition of professional qualifications and the deregulation of professions can be analysed from several perspectives: legal, economic, business, psychological, social and similar areas. In this paper we focus on the legal aspects, while further touching on some social and other implications. Thus, the purpose of this paper is to present and analyse the fundamental issues related to the process of the deregulation of professions. As this process is closely related to the recognition of professional qualifications, the paper also gives an overview regarding the fundamental legal issues in this field. As countries should approach the deregulation of professions systematically, the core of this paper are the recommendations for an appropriate approach to this process.

After the introduction of the basic premises (Point 1), we first present and deal with different approaches to defining the phrase “(de)regulation of profession” itself (Point 2). In Point 3, we present and analyse international legislation based on legal documents, which deal (directly or indirectly) with the (de)regulation of professions. Furthermore, a comparative review of the implementation of Directive 2005/36/EC in selected member states is also presented. The relation between the (de)regulation of professions and the economic environment, stressing the influence of the Services Directive, is dealt with in Point 4. The paper ends with conclusions and recommendations for the potential deregulation of professions.

## 2. Definition of the (De)regulation of Professions

When discussing the (de)regulation of professions, the following terms must to be succinctly defined: *profession*, *regulated profession*, *professional qualification*, *regulation* and *deregulation*. Firstly, “profession” is work, pursued by someone and for which special know-how, partially or entirely acquired through intellectual work (study), is required; based on this, one provides services with a high degree of integrity and establishes direct or trustworthy relationships with customers or clients.<sup>18</sup> The term “regulated profession” should be explained in more detail: in theory, authors from different disciplines define it differently, as there is neither general consensus as to what exactly a “regulated profession” or “regulation” is. Den Hertog<sup>19</sup> proposes “regulation” to be “the application of legal instruments in order to implement social-economic goals”. The author differentiates two fundamental forms of regulation – economic and social. According to Hertog, economic regulation incorporates two sub-types of regulation, i.e. structural regulation and regulation of behaviour<sup>20</sup>. Structural regulation applies to regulation of the market structure. Examples of structural regulation are restrictions with regard to access to the market or exit from it, and according to Hertog this also includes the regulation of professions. Regulation of behaviour establishes rules of behaviour in the market. Price control, marketing prohibitions and standards of quality are examples of this type of regulation. According to Hertog, social regulation is found in the fields of environmental protection, working conditions, user protection and similar areas. Overall, the author understands general interest, i.e. the best possible allocation of limited resources for individual and collective goods, as one of the best reasons and goals of regulation.

The definition of a “regulated profession” in Article 3 of Directive 2005/36/EC provides that a regulated profession is *a professional activity or group of professional activities, access to which, the pursuit of which, or one of the modes*

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<sup>18</sup> N. Garoupa, *Regulation of Legal and Medical Professions in the US and Europe: A Comparative Analysis*, Working Paper 2006-2011, 2006, <http://www.fedea.es/pub/papers/2006/dt2006-11.pdf> (accessed March 6, 2012).

<sup>19</sup> J. Den Hertog, *General Theories of Regulation*, in B. Bouckaert, G. De Geest (ed.), *Encyclopedia of Law and Economics*, Edward Elgar, Cheltenham, Northampton, 1999, 223–270.

<sup>20</sup> J. Kay, J. Vickers, *Regulatory Reform: An Appraisal*, in G. Majone (ed.), *Deregulation or re-regulation*, Pinter Publishers, London, 1990, 223 - 251.

*of pursuit of which is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to the possession of specific professional qualifications; in particular, the use of a professional title limited by legislative, regulatory or administrative provisions to holders of a given professional qualification shall constitute a mode of pursuit.* The definition is meant only for the purpose of Directive 2005/36/EC; this being its main deficiency. Thus, it can neither be applied as generally valid nor be referred to from the legal perspective in other cases, i.e. outside of the regulative scope of Directive 2005/36/EC. The definition of a “professional qualification” is also defined in the Professional Qualifications Directive 2005/36/EC. Article 3 (1b) states that a professional qualification is “*attested by evidence of formal qualifications, an attestation of competence referred to in article 11, point (a) (i) and/or professional experience.*”

Finally, the terms “regulation” and “deregulation” should be explained. When defining the regulation of professions, generally, (a) regulation with regard to entrance requirements and (b) regulation with regard to the requirements for the pursuit of the profession are distinct.

Regulation of entrance requirements means setting requirements, under which one can enter into an individual profession. This takes several forms such as registration, licensing, negative licensing, certification and accreditation<sup>21</sup>. The entrance requirements may be additionally restrictive. The typical example is the legal profession of a notary public, in which case the state limits the number of notaries public in a certain geographical area in addition to the requirements of achieving certain standards of the profession and professional competence. These can be defined either by the state or by professional associations (e.g. the notary public chamber).

In addition to entrance requirements, requirements for the pursuit or provision of certain professions may be established. These may include restrictions such as fixed prices, prohibitions on certain forms of marketing or promotion, and the definition of professional and ethical standards. The persons breaching them are subject to penalties.

Before asking how to regulate (in which legal acts, what legislative technique is to be applied, etc.), there is the question of whether a certain profession should be regulated at all. Even though this is not a legal question, it has a direct effect on the legal regulation. In our opinion, the nature of an individual profession is relevant for the decision whether or

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<sup>21</sup> A. Fells, *Regulation, Competition and the Profession*, *Proceedings of the Industry Economics Conference*, 2011, <http://www.accc.gov.au/content/index.phtml/itemId/255463> (accessed April 28, 2011).

not to regulate it. There is, foremost, the dilemma whether the nature of an individual profession requires a unique, special and separate approach. The seriousness of the consequences arising from an inappropriate action, as well as the degree of probability of the successful implementation of the regulation, are both important. It is essential, in light of the EU's desire to deregulate professions, that an individual Member State is able to explain and support the establishment of the access restrictions of a (regulated) profession. This, of course, is not only crucial from the point of view of the EU, but also for the purpose of designing a coherent strategy and communicating with social partners and the (professional) public.

Generally, there are different reasons that justify the regulation of certain professions. Firstly, there is the consumer protection argument. Formal requirements for the pursuit of a certain profession can be aimed at ensuring the high quality of products and services or preventing underqualified professionals from providing services. Another reason is the overcoming of information asymmetries, (i.e. some professional services require a high level of technical knowledge and consumers may find it difficult to judge the quality of services being provided). Secondly, for services (or even service sectors), which are very important from the perspective of national interest, there is a need to protect the independent exercise of a given activity. Thirdly, formal requirements for the pursuit of a certain profession can be aimed at ensuring the health and safety of users (buyers or service recipients) and occupational health and safety for workers who provide those products/services<sup>22</sup>.

Provided there are justifiable reasons for the regulation of a certain profession, then a second fundamental question follows: how should the profession be regulated and who should set the rules. In general, two approaches answer this question: *state regulation* through mandatory legal rules<sup>23</sup> or *autonomous regulation* by industry or professional associations<sup>24</sup>. Both approaches enable the setting of access requirements, operational rules and other protective provisions for the products' or services' users. Professional and other associations are usually much more acquainted with the operation of professions, and it is thus recommendable that they at least participate in the process of rule formation. During the process,

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<sup>22</sup> DG Internal Market and Services, *op. cit.*

<sup>23</sup> J. Den Hertog, *op. cit.*

<sup>24</sup> Analysed in detail by A. Ogus, *Self-regulation*, in B. Bouckaert, G. De Geest (ed.), *Encyclopedia of Law and Economics*, Edward Elgar, Cheltenham, Northampton, 1999, 587-602.

one should always take notice whether or not too extensive protection of the “guild” is being imposed. Existing members of an individual group wishing to (overly) protect their position in the market may try to impose restrictive and/or disproportionate requirements for the access and/or pursuit of the profession for new members. In such cases, the state should respond appropriately and prevent the unjustified obstacles to the access and pursuit of a certain profession.

In general, we believe that the regulation of professions should be defined as the *activity of a state to set requirements for the access and/or pursuit of a certain profession in its legal regulations*. Since the deregulation of professions is the opposite process, it can be defined as the *“lessen” of regulation (for pursuit) of a certain profession*. Considering this, deregulation involves *“free pursuit”* in the sense of execution or pursuit of (formerly) regulated professions. Thus, it may be generally said, that *deregulation is the lessen of formal requirements for the pursuit of a profession*, which formerly required the fulfilment of certain conditions, such as acknowledged and required education, work experience, etc.

### **3. Legal Documents Regarding the (De)regulation of Professions: a Comparative Analysis**

On the international level, neither the International Labour Organization (ILO) nor the Council of Europe has issued legally binding documents for dealing with the deregulation of professions. The ILO, in certain recommendations, regulates only the recognition of professional qualifications, mostly in the sense that member states should develop a system of professional qualifications and a system for their recognition. On the other hand, the recognition of professional qualifications has been an important issue in the EU for the last twenty years. The EU regulates the system of such recognition in Directive 2005/36/EC, which will be presented in Point 3.2. The directive has been fully transposed into the legal codes of all 27 EU Member States<sup>25</sup>. A comparative review of the transposition in selected member states will follow in Point 3.3. We conclude this section with critiques of the system of the recognition of professional qualifications in the EU.

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<sup>25</sup> At the time of writing Croatia was not a EU member yet.

### *3.1. International Labour Organisation Recommendations*

The first recommendation that mentioned the importance of professional qualifications and the development of a national framework for their recognition was Human Resources Development Recommendation No. 150 adopted in 1975. In 2004, this recommendation was replaced by ILO Recommendation No. 195 Human Resources Development: education, training and lifelong learning (No. 195). According to ILO Recommendation 195, “*Members should develop a national qualifications framework to facilitate lifelong learning, assist enterprises and employment agencies to match skills demand with supply, guide individuals in their choice of training and career and facilitate the recognition of prior learning and previously acquired skills.*” (Art. 5, e). In ILO Recommendation 195 “qualifications” are defined as “*the formal expression of vocational skills of the worker, recognised at the international, national or sector levels.*” (Art. 2 c). ILO Recommendation 195 also states that special provisions should be designed to ensure the recognition and certification of skills and qualifications for migrant workers (Art. 12).

Contrary to the ILO and other international organisations that do not deal with the deregulation of professions (or at least not very directly), this field arouses much interest in the professional and professional public in the EU. As already stated, the EU recognises that the deregulation of professions is a supporting measure to ensure the four freedoms in the EU, foremost the free movement of workers in relation to the system of the mutual recognition of professional qualifications. The *fundamental legal framework in this field is Directive 2005/36/EC*. Through this directive the EU reformed the system of the recognition of professional qualifications with the purpose of contributing to greater flexibility in the labour markets, additionally liberalising the provisions of services, encouraging automatic recognition of professional qualifications and simplifying the related administrative procedures.

### *3.2. Directive 2005/36/EC*

Directive 2005/36/EC regulates the system of the recognition of qualifications and enables nationals of Member States access to and pursuit of regulated professions or activities in other Member States under the same conditions as those that apply to nationals of the host Member

State. According to currently available data, there are approximately 800<sup>26</sup> regulated professions in the EU (all Member States).

A citizen of the EU being fully qualified to pursue a profession in one Member State and wishing to pursue this profession in another Member State, in which the profession is regulated, must first apply for the recognition of their professional qualifications. The rules of Directive 2005/36/EC are not unified for all professions. There are three major groups of professions, to which different rules apply.

The first group includes professions for which the minimum training conditions (professional qualifications) are coordinated at the EU level. The automatic recognition of professional qualifications applies to these professions, which include doctors, nurses of general health care, dental practitioners, veterinarians, midwives, pharmacists and architects. Annex V to Directive 2005/36 lists all professional titles, the holder of which has the right to the automatic recognition of professional qualification anywhere in the EU.

The second group of professions includes handicraft, industrial and trade professions (the professions in Annex IV to Directive 2005/36/EC), for which automatic recognition of “professional experience” applies.

The third group consists of professions for which the professional qualifications could not be unified because of the great differences existing among the Member States. Thus, a general system of mutual recognition of professional qualifications applies. The system of mutual recognition means that the training of a candidate for the pursuit of a regulated profession in a certain Member State is subject to the supervision of competent bodies in that Member State. The fundamental principle of this system is that if one is trained for the pursuit of a certain profession in their home Member State, they are trained for the pursuit of the same profession in any EU Member State. According to the general system, recognition means that the competent body in the host Member State verifies the proof of the competency or professional qualifications acquired in another Member State. This involves, foremost, the verification whether there are considerable differences between the training that the applicant completed (usually in their home state) and the training required by the host state. In cases where such differences are found to exist, the competent body must allow the applicant for the recognition of professional qualifications to reconcile these differences by

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<sup>26</sup> DG Internal Market and Services, *op. cit.*



some additional measures. The applicant can either take an exam of professional competence or be granted an adaptation period of a maximum of three years. If the competent body establishes that the professional qualifications acquired in the another EU Member State correspond to the professional qualifications set forth in the national legislation, or if the applicant submits proof of having successfully completed the designated adaptation period or the exam of professional competence, this body issues a decision recognising the professional qualifications for the pursuit of a specific regulated profession in the host Member State.

Directive 2005/36/EC does not apply in cases where a degree does not prove special professional training (i.e. training that is intended for a certain profession). In such cases Article 45 of the Treaty on European Union (stating that the level of education, but not the content of training, is assessed for the pursuit of a profession) applies.

Special requirements apply for access to working positions in the public sector. The EU Member States may only limit access to such working positions if they directly or indirectly involve participation in the execution of legal public powers and duties, or the protection of special interests of the state or other public bodies. At this point, it should be mentioned that access to working positions in the public sector is also directly related to the question of language knowledge<sup>27</sup>.

### *3.3. A Comparative Review of the Implementation of Directive 2005/36/EC in Selected Member States*

Directive 2005/36/EC was fully and timely transposed into the legal codes of all 27 EU Member States between 2007 and 2010<sup>28</sup>. Member

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<sup>27</sup> This paper does not deal with this question in detail, as it is a broad issue requiring a separate discussion. Nevertheless, in short, requirements related to language knowledge are permitted, so long as they are reasonable and necessary for the pursuit of the profession. Systematic standardised language tests are contrary to the principle of proportionality and requirement of a high degree of language knowledge is justified only in certain cases and only for certain working positions (Article 53 of Directive 2005/36/EC). The language requirements with regard to the free flow of workers are regulated in Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community, Official Journal, L 257.

<sup>28</sup> European Commission, *Evaluation of the Professional Qualifications Directive*, 2011, [http://ec.europa.eu/internal\\_market/qualifications/docs/news/20110706-evaluation-directive-200536ec\\_en.pdf](http://ec.europa.eu/internal_market/qualifications/docs/news/20110706-evaluation-directive-200536ec_en.pdf) (accessed March 3, 2012).

States transposed it in one of two ways, i.e. either **vertically** by changing every regulation related to an individual profession, or **horizontally** with the adoption of one law, covering all professions.

In the following section, a comparative review of the Directive's transposition in six EU Member States, i.e. Slovenia, Austria, Germany, Italy, Denmark and Finland, is presented. We start with a short description of the recognition procedure, and then present a comparative review of the transposition of Directive 2005/36/EU from the aspect of (a) the legislative approach to the transposition, (b) the competent bodies and procedure of recognition, and (c) the formal requirements for recognition.

The starting point of the presented analysis was Slovene legislation, as this is our home country. The first criterion for the inclusion of the other five countries into the comparative analysis was the extent to which professions are regulated in the selected countries, whereby Slovenia and Austria belong to the group of countries with a very high amount of regulation (247 regulated professions in Slovenia and 214 in Austria). The second group of countries includes Germany, Italy and Denmark, which have an average amount of regulation (153 regulated professions in Germany and 155 in both Italy and Denmark), whilst Finland belongs to the group of countries with a very low amount of regulation (at the time of writing, there were less than 100 regulated professions in Finland).

The second criterion was the legal families upon which the countries' legal code is founded, namely German, Roman, Nordic and Slavic. To have a balanced comparative analysis, we considered Slovenia as a member of the Slavic legal family, Italy the Roman, Germany and Austria the German, and Denmark and Finland the Nordic.

### *3.3.1. A General Description of the Recognition Procedure*

In the procedure for the recognition of professional qualifications, the competent body (in a host Member State) compares the written documentation of an applicant's professional qualifications with the professional qualifications required by the regulations for the pursuit of a regulated profession or activity in that Member State. If the competent body, based on this comparison, establishes that the applicant's professional qualifications meet the professional qualifications required by the regulations of the host Member State, it issues a decision on the recognition of the applicant's professional qualifications. If, however, the competent body establishes that the applicant's professional qualifications

are not in accordance with the national regulations of that Member State, it invites the applicant to either pass an exam of professional qualification or to complete an adaptation period, during which time the outstanding requirements for the recognition of the professional qualifications will be fulfilled. When the applicant submits the proof of a successfully completed adaptation period or of an exam of professional qualification, the competent body issues a decision on the recognition of professional qualifications.

The rules prescribed by Directive 2005/36/EC are different in cases where the profession is only pursued in the host Member State temporarily. In these cases, in accordance with Directive 2005/36/EC, verification of the qualifications of a worker is not permitted, unless the profession influences health and safety. However, Directive 2005/36/EC stipulates that the host Member State may demand an annual report, whereby the provider of services has to present a written statement to the competent body on a prescribed form before providing services in the host Member State for the first time. A written statement is also necessary if, after commencing the pursuit of certain activities related to that service in the host Member State, the circumstances fundamentally change. The prescribed form usually includes personal data of the service provider and data on insurance coverage or other modes of personal or collective insurance with regard to professional liability. The competent body is obliged to either inform the service provider that their professional qualifications will not be verified, issue a decision on the recognition of professional qualifications, or notify the candidate of the reason for the delay within a month of receiving the registration and all enclosed documents.

If the applicant wishes to pursue a profession that is regulated in the host Member State, but is not regulated in the Member State of the applicant (or in the Member State of the applicant's residence), they must have been providing that service in their Member State for at least two consecutive years within the last ten years.

### *3.3.2. Countries' Approaches to Transposition*

In this section, we present a comparative review of the transposition of Directive 2005/36/EU from the aspect of (a) the legislative approach to the transposition, (b) the competent bodies and procedure of recognition, and (c) the formal requirements for recognition (as the existing formal

requirements that are imposed in the recognition procedures may have a negative effect on the recognition procedure).

Italy was the first country to transpose Directive 2005/36 EC into its legal code. Considering the recommendations of European experts, Italy took the horizontal approach and implemented Directive 2005/36/EC with only one legal act, i.e. Law No. 206 of 9 November 2007, replacing the national legislation on the recognition of professional qualifications. Italy was also the first to establish a National Contact Point for the Recognition of Professional Qualifications as a part of the Italian Department for the Coordination of Communitarian Policies.

Directive 2005/36/EC was transposed into the *Slovene* legal code through a vertical approach with 17 regulations<sup>29</sup>. The only exception to the approach was with respect to the regulation of the procedure for the recognition of qualifications, which is regulated in a uniform manner for all professions in one single law.

In *Finland* the horizontal approach was taken with sectoral (profession specific) laws and regulations on the national level (a total of 17 notifications)<sup>30</sup>. The transposition was completed in November 2008.

In both Denmark and Austria, Directive 2005/36 was transposed through a horizontal approach, namely into the *Danish* legal system with the law (Assessment of Foreign Qualifications Act of April 2013) and into the *Austrian* legal system by amending the existing Commercial Code.

*Germany* recently modernised its system for the recognition of professional qualifications by adopting the Professional Qualifications Assessment Act, which came into effect on 1 April 2012. It regulates the procedures and criteria for assessing the equivalence of foreign professional qualifications with those of the relevant profession in Germany. It has extended, simplified and improved procedures for evaluating foreign vocational qualifications, which come under the responsibility of the Federal Government<sup>31</sup>.

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<sup>29</sup> European Parliament, EU, EP, DG for Internal Policies. *Study on Transposition of the Directive on the Recognition of Personal Qualifications*, IP/A/IMCO/ST/2009-05, 2009, <http://www.europarl.europa.eu/.../20101025ATT89911EN>. (accessed February 20, 2011).

<sup>30</sup> European Commission, *Commission Staff Working Document on the Transposition and Implementation of the Professional Qualifications Directive* (Directive 2005/36/EC), 2010, [http://ec.europa.eu/internal\\_market/qualifications/docs/evaluation/staff-working-doc\\_en.pdf](http://ec.europa.eu/internal_market/qualifications/docs/evaluation/staff-working-doc_en.pdf) (accessed April 20, 2012).

<sup>31</sup> German Federal Ministry of Education and Research, *op. cit.*

Regardless of the fact that the analysed countries approached the transposition in different ways, the outcome in all of them has in fact been the same: a recognition procedure was established. Each of these countries has a competent body which verifies the proof of the competency, or verifies professional qualifications acquired in other Member States, and all of them established national contact points.

### *3.3.3. Competent Bodies in the Recognition Procedure*

In Slovenia, the Ministry of Labour, Family and Social Affairs is competent for conducting qualification recognition procedures and coordinating the mutual recognition of qualifications in accordance with national legislation; and all ministries that are competent for the regulation of certain professions actively participate in the recognition procedure. In Italy, the competent authorities in the recognition process are different ministries, which are in general also competent for the regulation of certain professions. In Austria, different authorities are competent for the recognition of professional qualifications, such as regional state authorities, chambers of federal departments or state agencies. The Federal Ministry of Economy, Family and Youth coordinates the administrative procedures regarding the recognition of professional qualifications. In Finland, decisions on the recognition of qualifications are primarily made by the Finnish National Board of Education, field-specific state authorities or higher education institutions. The Finnish National Board of Education decides on the recognition of professional qualifications for civil service posts in Finland. Educational institutions decide on eligibility for further studies in Finland and, more importantly, recognition of studies completed in other EU Member States towards a qualification to be obtained in Finland (academic recognition). Lastly, different field-specific state authorities decide on granting professional practice rights. On the other hand, private sector employers decide by themselves on the competence conferred by a foreign qualification. In Denmark, the competent body in the system for the recognition of professional qualifications is the Danish Agency for International Education, which assesses a candidate's qualifications based on the required information. In Germany, the competent body in the system of recognition of professional qualifications is the Central Authority in the Field of Industry and Commerce (IHK FOSA).

#### *3.3.4. The Procedures and Formal Requirements for Recognition*

In the following, we give a short description of the recognition procedure in the selected countries with emphasis on formal requirements for recognition. In general, the applicants have to fill in an application and enclose various documents that support the application, i.e. confirm the existence of professional qualifications. However, the requirements regarding those documents differ from country to country.

In *Slovenia*, the ministries, professional associations or chambers establish whether the person wishing to pursue a certain profession or professional activity fulfils the requirements prescribed by the laws for that profession or activity. They do so based on the request of an applicant for the recognition of professional qualifications, lodged on the prescribed form. The application must contain proof of citizenship, degree(s), school transcripts and other proof of education and professional experience, as well as proof of other qualifications. As a rule, the documents must be submitted with a certified translation, enclosed with a copy of the originals. In the procedure, the competent ministry may request that the applicant also submits other proof in addition to the ones stated above.

An EU citizen wishing to obtain recognition of their professional qualifications in *Italy*, needs to apply for such recognition on the prescribed form. The applicant must enclose copies of personal documents, copies of degrees or other documents that confirm the existence of professional qualification, as well as a statement from the Italian embassy or Italian consulate in the country of origin or country where the qualification was obtained, regarding the reliability of those documents (degrees). The embassy in the applicant's home country or an authorized public organisation must certify all the documents that support the application for the recognition of professional qualifications. Usually the applicant must also enclose a confirmation of impunity or non-existence of prohibition against performing a certain profession, and a certificate with a detailed description of knowledge and competencies regarding the profession. All the listed documents must be translated into Italian.

In *Austria*, the application for the recognition of professional qualifications must be accompanied by the following documents (originals or certified copies, and certified translations): proof of citizenship of an EU Member State, the European Economic Area or Switzerland; a report from the judicial record or document (not older than three months) providing information on all criminal convictions, issued by a competent judicial or administrative authority in the country of origin; a certificate of

professional competence specified in Annex VII of Directive 2005/36/EC, issued by the competent authority in the applicant's home country or country of origin; other proof of qualifications (evidence of formal education and training, business licenses, certificates of professional trainings and apprenticeships, etc.).

An EU citizen wishing to obtain the recognition of professional qualifications in *Denmark*, is required to file an application with the competent Danish body. Along with the application the applicant must submit certain written documentation supporting their professional qualifications. Every regulated profession in Denmark requires different documentation. Usually, an applicant is required to provide the competent authority with an application for the access to pursue a regulated profession, which includes proof of nationality, documents supporting the qualifications, a list of subjects the applicant has studied (certified transcripts) and certificate of experience for that particular profession. In addition, the applicant may be requested by the authorized agency to provide other details, such as a character certificate or a document proving the non-existence of a criminal record. Generally, only certified copies of credentials are required, although sometimes the originals are also requested. All documents should be presented in their original languages, if not in their original languages, then in Danish or English translation. The embassy in the applicant's home country or authorized public organization must certify all the documents that support the application. Two copies of every document must be submitted.

If it is not possible to obtain the required documentation supporting the application for the recognition of professional qualifications, the applicant may apply for a "background report" (issued by the Danish Agency for International Education). The background report indicates how the Danish authorities usually proceed if all the required documents are submitted. This should help the applicant in finding a working position or acquiring further education.

In *Finland*, an applicant for the recognition has to submit a completed and signed application form, accompanied by the necessary appendices, to the Finnish National Board of Education. Applications must always be accompanied by proof of nationality, officially certified copies of the qualification certificates and transcripts of records, and translations of the qualification certificates and transcripts of records must be made by an authorised translator in Finland if the original document is issued in a language other than Swedish, Norwegian, Danish, Icelandic or English (officially certified copies of the translations). The Finnish National Board of Education does not accept original documents. Once the application

has been processed, the documents are filed with the Finnish National Board of Education's.

In *Germany*, the applicant for the recognition has to submit a completed and signed application form, accompanied by the necessary appendices, to the responsible Chamber of Commerce or to the Central Authority in the Field of Industry and Commerce. An application can be submitted irrespective of the person's nationality and residence status, however, access to the procedure may vary depending on the specific regulations of the individual regulated professions. Responsibility in the field of regulated professions is determined by the specific laws and regulations of the *Länder*. Along with an application, the applicant must submit certain written documentation supporting their professional qualifications: a table with an overview (in German) of training and any employment to date, proof of identity, proof of vocational qualifications, proof of relevant work experience, other certificates of competence (e.g. continuing vocational training), a declaration that no application for the determination of equivalence has been made in the past and proof that the applicant intends to work in Germany (although the latter does not apply for citizens of the EU, the European Economic area or Switzerland, or persons with residence in those countries). Usually, uncertified copies of documents are needed, however, in some cases the responsible authority can demand certified copies or original documents. The documents should be translated into German by publicly appointed and sworn interpreters/translators in Germany or abroad, although the responsible authority may waive the need for translations<sup>32</sup>.

In conclusion, based on the the description of the procedures and formal requirements for recognition in selected countries above, we can establish that the procedures for recognition are very similar and the differences refer mainly to the competent bodies issuing a recognition decision. On the other hand, the requirements regarding the documents that must be enclosed with the application differ importantly from country to country. Those requirements can represent an important administrative obstacle to the applicants for the recognition. In cases where documents must be translated or certified, the process of acquiring these documents can be both timely and costly. Therefore, a simplification of these formal requirements would be a step towards a more effective and user-friendly recognition procedure

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<sup>32</sup> German Federal Ministry of Education and Research, *Federal Recognition Act*, 2013, <http://www.anerkennung-in-deutschland.de/html/en/73.php> (accessed February 19, 2013).



### *3.4. The Deficiencies of Directive 2005/36/EC and Critiques of the System for the Recognition of Professional Qualifications*

Based on the regulations in individual Member States, the system for the recognition of professional qualifications has been the subject of much criticism by both migrants with professional qualifications and experts. It is labelled as being too complex and often too slow in its processing, and in some cases not sufficiently adapted to the demands of individual professions; this is also confirmed by statistical data<sup>33</sup>. Thus, the European Commission began *public consultation on Directive 2005/36/EC* in 2010 and issued a special report in July 2011 based on the 370 contributions that were received.<sup>34</sup> The main problems, which were discussed during the evaluation process of Directive 2005/36/EC, are the availability of information about recognition procedures, the efficiency of recognition procedures, the operation of systems of automatic recognition and determining the applicable areas of Directive 2005/36/EC. The majority of Member States supported the simplification of the procedures for the recognition of professional qualifications in their reports, while the representatives of the healthcare sector also stressed the need to protect the quality of services. Most of the interested parties expressed a positive opinion of the idea of a European Professional Card<sup>35</sup> in all categories. In the future, it will be necessary to modernise the regulation in the field of the recognition of professional qualifications. The system of automatic recognition, which currently only applies to seven professions, will also need to be extended to other professions and sectors, foremost to professions in the green and IT industries<sup>36</sup>. The European Commission proposes the simplification of procedures with the assistance of the European Professional Card; either the re-drafting of general rules on establishment in another Member State or reforming the rules for the provision of services in another Member State; and the modernisation of the system for the automatic recognition of qualifications for healthcare

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<sup>33</sup> European Commission, *Commission Reports, 2011*, [http://ec.europa.eu/competition/sectors/professional\\_services/reports/reports.html](http://ec.europa.eu/competition/sectors/professional_services/reports/reports.html) (accessed April 20, 2013), 13.

<sup>34</sup> European Commission, *Evaluation of the Professional Qualifications Directive, 2011*, [http://ec.europa.eu/internal\\_market/qualifications/docs/news/20110706-evaluation-directive-200536ec\\_en.pdf](http://ec.europa.eu/internal_market/qualifications/docs/news/20110706-evaluation-directive-200536ec_en.pdf) (accessed March 3, 2012).

<sup>35</sup> *Ibid.*, 86.

<sup>36</sup> European Commission, *Agenda for New Skills and Jobs, 2010*, <http://ec.europa.eu/social/main.jsp?langId=en&catId=958> (accessed April 25, 2013).

professions and forming of a legal framework for partially qualified experts. Another important idea is the introduction of the systematic review and mutual evaluation of all regulated professions in Member States.

When considering the EU legislation in the field of regulated professions and recognition of professional qualifications, it should be mentioned that the regulation of professions not only influences the right to work in any Member State, but also the freedom of establishment and freedom to provide services. The common aim of the rights to the free provision of services, free establishment and free flow of workers is, foremost, free access and non-discriminatory treatment and the lessening of all other obstacles, which directly or indirectly, and perhaps even indiscriminately, restrict these freedoms or cause them to be less attractive. The regulation of professions can represent such an obstacle, especially when such regulation is very restrictive and if the system of recognition of professional qualifications does not work properly. On the other hand, the deregulation of professions means the elimination of such obstacles. This paper does not deal with this question in detail, as it is a broad issue requiring a separate discussion.

#### **4. Conclusion – How to Approach the Successful Deregulation of Professions**

The first step in the deregulation of professions is determining its definition, which, in theory, is currently not uniform. Since the regulation of professions is implemented mainly through the adoption of legislation, we suggest that the definition of the deregulation of professions also be defined in law, based on the theoretical findings and definitions presented under Point 2 of this paper. At this point, it should be stressed that the definition of the deregulation of professions is, foremost, a political decision in choosing the manner, purpose and goals of deregulation. From the technical perspective, the *horizontal approach* makes the most sense, meaning the definition of deregulation should be uniformly regulated and stated in one single legal act. This act (*lex generalis*) should define what the regulation of a profession means in general terms. Then regulative acts in different fields (*lex specialis*) should determine a specific approach to deregulation for each individual profession. In this manner, a *uniform application of the definition of regulated and deregulated professions would be guaranteed* in all areas, i.e. for all professions.

The decision whether or not to deregulate significantly depends on the appropriate balance between the benefits of regulation and benefits of deregulation of professions. Starting from this point of view, superfluous rules should either be changed or omitted. The rules justified by the general interest should be kept, provided that they are proportional and necessary for the proper performance of the regulated profession. The rules justified by the general interest, but not achieving the desired effect, should be changed accordingly. For every profession and for every requirement that the state sets in order to restrict access to or pursuit of the profession, it should be stated (i) what exactly such a requirement ensures, and (ii) in what way the requirement ensures it. If there are no arguments for the regulation of the profession from the point of view of general interest (thus, there are no justified reasons for the regulation) or even if such arguments exists, but the regulation does not operate in the desired (planned) direction, a *different model of regulation should be considered*, meaning better or more efficient regulation, and in certain cases even deregulation. From this perspective, the term *re-regulation* of professions seems more appropriate than the term *deregulation*. The focal point of the lessening of requirements for the pursuit of certain professions is more extensive deregulation, meaning mainly re-regulation in the sense of different, i.e. better and more efficient, regulation. In addition, deregulation can present greater opportunities for employment. However, it also results in an increased number of potential candidates for a certain profession (competition), which lowers the chances of any given individual obtaining a working position. Furthermore, in light of the fact that deregulation inherently creates downward pressure on the prices of services and/or products that are being regulated, it can be expected that existing providers of currently regulated professions will resist the deregulation. Negative responses are very characteristic in this process; like the protests of taxi drivers in summer 2011 in Greece, or the protests in Italy in autumn 2011 and again in spring 2012, which also took place during the process of the deregulation of taxi services and other professions.

Reform in the field of the regulation of professions must also necessarily be economically evaluated, so that the costs of deregulation are compared to its benefits. It logically follows that every cost of regulation may also be presented as a benefit of deregulation and *vice-versa* – a positive effect of deregulation means that on the other side there is some negative effect related to the regulation. Weighing between one and the other should be done in a manner so that consideration is given to the *net effect of*

*deregulation* compared to the net effect of regulation, whereby it comprises the effects in their broadest sense.

Professions not regulated by the state are subject to non-consistent conditions in respect to professional knowledge and the acquisition of skills (including of very difficult ones), which is a negative consequence of deregulation. From the outside, deregulation may be seen as undermining a profession or may lead to a lower valuation of a deregulated profession. Another consequence may be the loss of professional abilities, when the acquisition of highly qualified knowledge is left to chance. Deregulation is a process of changes with regard to the position of the profession within society, which could lead to distrust and resistance from the members of professions, often being the consequence of a fear of the unknown and feeling of personal endangerment<sup>37</sup>. Deregulation may also influence identification with the profession, which is an important factor of work success, and, as a key element of satisfaction at work, it may also influence the work success of individuals. Work success is closely related to the appropriate competence of an individual in the labour market. Arising from this, there is a certain probability that products in deregulated professions will have less quality or that services will be provided less professionally, because individuals with less expertise will participate in the profession. Furthermore, the social cost of deregulation may be reflected in a *low level of public trust* in a profession and in the *undermining* of a profession, which can be neutralized by self-regulation. Also, non-regulated professions may enjoy a positive reputation, provided that their products and services are of high quality. In this case, professional associations may play an important role, especially if they implement professional ethical norms and high standards. On the other side, it needs to be noted that state regulation of a profession does not bring trustworthiness into the profession by itself; efficient supervision is necessary for the trustworthiness of a profession to be built or kept.

In terms of process, the deregulation of professions should be dealt with separately in each and every industry so that the reasons for, consequences and effects of the deregulation can be studied for each industry separately (of course this is only after the adoption of a general law, regulating the deregulation on the horizontal level and foremost establishing its definition). In this process, regulations regarding a

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<sup>37</sup> A. Arzensek, *Perceived Factors and Obstacles to Cognitive Schema Change During Economic Crisis*, in *Organizacija*, 2011, vol. 44, n 4., 137-144.

profession in a certain industry should first be collected and analysed from the perspective of set requirements, arguments for the regulation and effects of the regulation (why are certain requirements set and how are they implemented in practice). Next, the proposals for deregulation should be formed, i.e. which requirements should be done away with and why. In this phase, it is recommendable to also include the professional public and social partners to the widest possible extent. Such cooperation is important not only for determining the appropriate content of the deregulation or for keeping records of arguments for and against the deregulation, but also for the purpose of decreasing the *a priori* opposition. The possibilities of an organised negative response against or resistance to deregulation in the form of strikes, protests and similar actions should be prevented or at least mitigated as much as possible. Thus, it is very important that the state already begins building a social dialogue during the preparations for deregulation; the social dialogue should include, besides the employers or employers' associations, workers associations and other members of professions, as well as customers and clients, to whom it should be explained what benefits society as a whole can expect from the deregulation. Additionally, when communicating with the stakeholders of the deregulation (employers, workers' associations, members of professions, professional groups, profession, users and public to the widest possible extent) the term deregulation should be replaced by the term re-regulation.



# Adapt International Network



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